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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

DONNA LEACH, individually and on behalf  
 of the Estate of Clyde Leach,

Plaintiff,

v.

TESLA, INC. and DOES 1 through 100,  
 inclusive,

Defendants.

Case No. 23-cv-03378-SI

Hon. Susan Illston  
 Filed: April 11, 2023 (Santa Clara Sup. Ct.)  
 Transfer Date: July 7, 2023

**JOINT STATEMENT REGARDING  
 DISCOVERY DISPUTE AS TO  
 PLAINTIFF'S NOTICE OF DEPOSITION  
 OF LARS MORAVY PURSUANT TO  
 JUDGE ILLSTON'S STANDING ORDER**

Discov. Cut-Off: February 14, 2025  
 Trial Date: July 21, 2025

Pursuant to Section 3 of Judge Illston's Standing Order, Defendant Tesla and Plaintiff Donna Leach respectfully submit this Joint Statement for determination of, or guidance on whether Plaintiff is entitled to depose Lars Moravy, Tesla's Vice President of Vehicle Engineering. Counsel for the parties met and conferred by teleconference on December 18, 2024. There are 42 days until the close of fact discovery on February 14, 2025, and 199 days until trial.<sup>1</sup>

## **TESLA'S POSITION**

### **1. Summary of Position**

Tesla objects to the Plaintiff's deposition notice for Lars Moravy on apex doctrine grounds, and seeks a protective order from the Court preventing the deposition. Mr. Moravy is Vice President of Vehicle Engineering at Tesla, one of the highest positions in the company, directly reporting to Tesla's CEO. He is the head engineer and technical lead for a team of over 2,000 engineers, technicians, and analysts. Plaintiff noticed the deposition without conferring with Tesla and without any explanation for why Plaintiff believes Mr. Moravy has unique or superior knowledge about anything relevant to their vague defect claims in this case. Indeed, Plaintiff has not yet taken a Tesla deposition and thus has no reason to believe that Mr. Moravy can answer questions others who will be deposed cannot. Because Plaintiff has failed to show she has exhausted other discovery and that Mr. Moravy has unique and superior knowledge to her claims, the deposition should not proceed.

### **2. Background**

On December 6, 2024, without prior notice or conferral, Plaintiff unilaterally noticed the deposition of Lars Moravy to take place less than two weeks later, on December 18, 2024. Tesla requested a conferral and notified Plaintiff the deposition could not go forward on the noticed date. The parties met and conferred on December 18. During the conference, Tesla requested that Plaintiff explain the basis for taking Mr. Moravy's deposition. The only explanation provided was

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<sup>1</sup> Tesla recognizes this brief is beyond the 5-page limit set by the Court. However, Tesla believes time is of the essence for filing this motion given that Plaintiff—over Tesla's objection—included the issue of Mr. Moravy's deposition in a portion of the joint brief being heard on January 10, 2025.

1 that Mr. Moravy made public representations about the crashworthiness of the front structures of  
2 the Tesla Model Y. Plaintiff refused to identify the public statements with any specificity. Plaintiff  
3 also argued that the deposition was necessary because Tesla has not identified other engineers in  
4 discovery. But Plaintiff has taken a kitchen-sink approach to her product liability claims here, and  
5 her broad interrogatories seek the identity of every engineer to ever have contributed to the design  
6 or testing of the Model Y. (*See* ROG 23: “Identify – by name, position, employer, and last known  
7 address – the engineers who designed and tested Clyde Leach’s Tesla Model Y.”)

8 During the meet and confer call, Tesla offered to consider a more narrowed interrogatory  
9 so that it could identify potential individuals. Additionally, Tesla had already offered to provide a  
10 Rule 30(b)(6) witness to testify generally on the topic of crash testing and related evaluation of  
11 performance of front structures in crash testing with respect to the Tesla Model Y (which seems  
12 to potentially be a topic Plaintiff seeks discovery on for Mr. Moravy). And, not identifying other  
13 engineers in discovery—in a company of more than 130,000 employees—does not give license to  
14 Plaintiff to go straight to the top of the engineering hierarchy. Tesla also offered during the call to  
15 continue conferring with Plaintiff to narrow what testimony she is seeking in order to identify a  
16 more appropriate and less intrusive deponent other than Mr. Moravy, but Plaintiff refused,  
17 necessitating this brief. Plaintiff also refused pushing the issue of Mr. Moravy’s deposition until  
18 after the Tesla corporate representative depositions.

19 Tesla sent its portion of the brief to Plaintiff on December 23 and requested Plaintiff’s  
20 portion be returned by 4:00 p.m. on December 30 so it could be filed that day. On December 30,  
21 Plaintiff’s counsel sent an email two hours before Tesla’s 4:00 p.m. deadline advising he just saw  
22 the email and would need until January 10 to provide Plaintiff’s portion of the brief. Due to the  
23 Court’s hearing on January 10 with respect to Plaintiff’s discovery motion—which included  
24 reference to the Lars Moravy deposition over Tesla’s objection to its inclusion in that brief—Tesla  
25 advised Plaintiff that Mr. Moravy’s briefing needed to be filed by January 3 to allow the Court  
26 enough time to include the issue in the January 10 hearing if it chose to do so. Thus, the timing  
27 and necessity of this brief is a problem of Plaintiff’s own making. Both parties agreed to file this  
28

1 brief on January 3—11 days after Tesla sent its portion to Plaintiff.

### 2 **3. Legal Standard and Argument**

3 When a party seeks the deposition of a high-level executive (the “apex” deposition), it must  
 4 establish that (1) the deponent possesses unique, non-repetitive, firsthand knowledge of relevant  
 5 information, and (2) the party seeking the deposition has exhausted other less intrusive discovery  
 6 methods, such as interrogatories and depositions of lower-level employees, to get the information that  
 7 is needed. *Opperman v. Path, Inc.*, 2015 WL 5852962, at \*7 (N.D. Cal. Oct. 8, 2015). This is because  
 8 courts have recognized that such discovery “creates a tremendous potential for abuse or harassment.”  
 9 *Apple Inc. v. Samsung Elecs. Co.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). “[T]he closer that a proposed  
 10 witness is to the apex of some particular peak in the corporate mountain range, and the less directly  
 11 relevant that person is to the evidence proffered in support of his deposition, the more appropriate the  
 12 protections of the apex doctrine become.” *Apple Inc.*, 282 F.R.D. at 263. Generally, courts will refuse  
 13 to allow the immediate deposition of apex individuals before the depositions of lower-level employees  
 14 with more intimate knowledge. *Mehmet v. PayPal, Inc.*, 2009 WL 921637, at \*5 (N.D. Cal. Apr. 4,  
 15 2009). “When a high-level corporate executive lacks unique or superior knowledge of the facts in  
 16 dispute, courts have found that good cause exists to prohibit the deposition.” *Glumetza Antitrust Litig.*,  
 17 2020 WL 3498067, at \*38 (N.D. Cal. June 29, 2020). Additionally, it is not enough to show firsthand  
 18 knowledge of relevant information; there must be a showing of unique knowledge of material facts.  
 19 *See Affinity Labs of Tex. v. Apple, Inc.*, 2011 WL 1753982, at \*15 (N.D. Cal. Apr. 3, 2015) (“[Plaintiff]  
 20 misstates the standard for deposing a CEO, [by] claiming it is sufficient to show . . . ‘firsthand  
 21 knowledge of relevant information.’”).

22 Mr. Moravy has one of the highest positions at Tesla, directly reporting to Tesla’s CEO.  
 23 He is the head engineer and technical lead for a team of over 2,000 engineers, technicians and  
 24 analysts in charge of all Tesla vehicle hardware design globally, vehicle testing and validation,  
 25 including but not limited to body, interiors, exteriors, lighting, chassis, battery structures, thermal,  
 26 etc., development, launch, automation, manufacturing and sustaining as well as all supporting  
 27 product data management and engineering tools. Given his obligations and responsibilities, it

would be a substantial burden and hardship to be deposed in this matter, not only for Mr. Moravy personally, but for Tesla's numerous employees who report to him. Furthermore, with such a broad scope of disciplines reporting up to him, it is even less likely that Mr. Moravy would have the level of intimate familiarity or knowledge that Plaintiff would want or hope to obtain from a deposition that could range in topics from the acceleration system to the structural composition of the chassis to the chemical engineering behind the battery pack.

Although Plaintiff has been vague, at best, as to why she needs to depose Mr. Moravy, it is abundantly clear that a public statement, by itself, is insufficient under the apex doctrine to justify the deposition. *Affinity Labs*, 2011 WL 1753982, at \*45 ("Courts have repeatedly denied apex depositions even on a showing that the executive made public statements on relevant issues."); *see also Thomas v. IBM*, 48 F.3d 478, 483 (10th Cir. 1995) (preventing apex deposition of IBM chairman even though he allegedly authored policy of age discrimination); *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (preventing deposition of Upjohn's president even though he had testified before Senate concerning the testing, marketing, and use of the product at issue).

Even if Plaintiff could show that Mr. Moravy has unique knowledge related to this matter, she has not "exhausted other less intrusive discovery methods, such as interrogatories and depositions of lower-level employees, to get the information that is needed." *Opperman*, 2015 WL 5852962, at \*7. Indeed, after multiple weeks, Plaintiff only recently countered Tesla's offer of a Rule 30(b)(6) witness to testify generally on the topic of crash testing and related evaluation of performance of front structures in crash testing with respect to the Tesla Model Y. "Courts generally refuse to allow the immediate deposition of high-level executives, the so-called 'apex deponents,' before the depositions of lower level employees with more intimate knowledge of the case." *Mehmet*, 2009 WL 921637, at \*5 (emphasis in original). Tesla submits the same should be done here. Alternatively, Tesla requests further briefing to address this issue.

## **PLAINTIFF'S POSITION**

### **1. Plaintiff's Summary of Position and Facts**

Tesla unilaterally selected January 3, 2025 at 4:00 as the deadline for Plaintiff's portion of

1 this joint filing. It is Plaintiff's position that Tesla has not engaged in a good-faith meet and confer  
2 process regarding this dispute. In the only meet and confer discussion regarding Lars Moravy,  
3 Plaintiff's counsel offered to narrow the scope of Mr. Moravy's deposition once the initial Tesla  
4 F.R.C.P. 30(b)(6) topics were completed. But Tesla has yet to produce **any** witnesses.

5 Plaintiff contends that Tesla is seeking to "run out the clock" on the discovery schedule by  
6 delaying both 30(b)(6) and individual witness depositions of Tesla employees. In particular, Tesla  
7 believes that by delaying the appearance of any 30(b)(6) witnesses, it can prevent Plaintiff from  
8 taking depositions of individual witnesses. Because Plaintiff no longer believes that Tesla is acting  
9 in good faith, it has no choice but to pursue the depositions that need to be taken before the end of  
10 fact discovery.

11 In an effort to obtain discovery from Tesla, Plaintiff sent Tesla (at Tesla's own request),  
12 the following list of five priority 30(b)(6) topics on December 18, 2024: "1) collision testing of  
13 Tesla Model Y; 2) collision simulation/CAE/finite element analyses of Tesla Model Y; 3) PMM,  
14 OAA, AEB in the Tesla Model Y; 4) processes for consumer complaints and reports about  
15 unintended/uncommanded acceleration causing a collision or near-collision...; and 5) processes  
16 for consumer complaints and reports about frontal collisions resulting in battery-involved fires..."  
17 Tesla has not responded to these topics at all. But even if Tesla had done so, they are distinct from  
18 the information Plaintiff seeks from Mr. Moravy.

19 Plaintiff is entitled to depose Mr. Moravy because he has relevant information about the  
20 case, which can be obtained from no other source. Plaintiff has identified Mr. Moravy as the source  
21 of online videotaped statements regarding important issues in this case – the Model Y's front  
22 structures (and how they've been changed) and how those structures perform in frontal collisions.  
23 For its part, Tesla has refused to identify any engineers or employees as part of the discovery  
24 process at all, so Plaintiff has identified no alternative to deposing Mr. Moravy, particularly in  
25 light of Tesla's refusal to present a timely Rule 30(b)(6) witness.

26 ///

27 ///

Plaintiff intends to be reasonable in taking Mr. Moravy's deposition. In the interests of time, Plaintiff agrees to limit Mr. Moravy's deposition to three hours via Zoom (even though Mr. Moravy is located in the Bay Area), and to narrow the scope of the deposition to Mr. Moravy's own statements made in the following two videos posted on Tesla's YouTube channel:

1. "Lars Explains – Tesla Vehicle Safety." In this video (2:44), Mr. Moravy discusses in detail the new cast aluminum front structures of late model Tesla Model Y vehicles and asserts that Tesla's new design protects occupants in a manner contrary to what occurred in decedent Clyde Leach's fatal collision.

(<https://www.youtube.com/watch?v=3FhDfy9Ufl4&t=81s&pp=ygUNIkxhcnMgbW9yYXZ5Ig%3D%3D>)

2. "Model Y – Engineering from First Principles." In this video (2:36), Mr. Moravy discusses Tesla's engineering philosophy and the specifics of the new cast aluminum front structures used in the Model Y. (<https://www.youtube.com/watch?v=t0LECh9dfG4>)

These new cast aluminum front structures were not present in the front end of Mr. Leach's 2021 Tesla Model Y, which was instead constructed of stamped sheet steel. In its responses to Plaintiff's Interrogatories Nos. 11 and 12, however, Tesla denied implementing any changes or modifications to the front structures of the Model Y. Therefore, Mr. Moravy's statements regarding the new cast aluminum front structures in the Tesla Model Y **directly contradict Tesla's verified responses to Interrogatories Nos. 11 and 12**. Plaintiff needs to determine which statements are true, and whether Tesla has misrepresented these facts in its sworn discovery responses, or in its public recorded statements.

Tesla's claims that Plaintiff is seeking an "apex" deposition can be refuted on several grounds. First, Mr. Moravy is not a true apex witness; he is directly involved in Tesla's vehicle engineering, which is why he made the online statements about Tesla's vehicles. Unlike Elon Musk and other C-suite executives who may have broad business portfolios, Mr. Moravy is directly responsible for vehicle engineering. Moreover, Plaintiff can already demonstrate that Mr. Moravy possesses first-hand personal knowledge that no other known witness can provide,



1 including what he meant in his public statements and the source of the information he divulged.  
2 Moreover, Tesla itself has identified no other witness capable of providing the information  
3 Plaintiff seeks. Under these circumstances, Plaintiff is entitled to the short, targeted deposition that  
4 she seeks.

5 **2. Plaintiff's Legal Argument and Requested Relief**

6 Mr. Moravy's title does not protect him from being deposed when Plaintiff has  
7 demonstrated that Mr. Moravy possesses unique first-hand knowledge related to the litigated  
8 claims, and the necessary information cannot be obtained through other, less burdensome, or  
9 intrusive means. Indeed, Tesla has not offered any less burdensome or intrusive means. Mr.  
10 Moravy has unique first-hand knowledge related to his online videotaped statements regarding  
11 important issues in this case – the Model Y's front structures (and changes made to those  
12 structures) and how they perform in frontal collisions. Moreover, he had time to film the videos  
13 posted to Tesla's website; he should now have time to be asked about them when they are directly  
14 relevant to this case.

15 Plaintiff does not seek Mr. Moravy's deposition to cause undue burden or harassment. In  
16 order to address any concerns about inconvenience of the deposition, the court may limit the length  
17 or scope of the deposition in order to avoid any harassment or undue burden. *Apple Inc. v. Samsung*  
18 *Electronics Co., Ltd.*, 282 F.R.D. 259, 265-267 (N.D.Cal. 2012) (allowing depositions of high-  
19 ranking corporate officers, but limiting them to 2-3 hours each); *Scott v. Chipotle Mexican Grill,*  
20 *Inc.*, 306 F.R.D. 120, 124 (S.D.N.Y. 2015) (limiting apex depositions to four hours).

21 For the foregoing reasons, it is Plaintiff's position that the Court should deny Tesla's  
22 motion for a protective order regarding the deposition of Mr. Moravy, or in the alternative, limit  
23 the time (to three hours) and the scope (to Mr. Moravy's own statements made in the two  
24 informational videos Plaintiff has identified.)

25 If the Court deems this filing premature, it could hold the motion in abeyance until after  
26 Tesla has produced its initial F.R.C.P. 30(b)(6) deponents, which, in Plaintiff's view, should occur  
27 by no later than January 17, 2025, four weeks before the close of fact discovery. If feasible,  
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1 Plaintiff requests that a timeline for these depositions be ordered to reduce the potential that  
2 Plaintiff will need to file another discovery motion this month, prior to the close of fact discovery.

3  
4 Dated: January 3, 2025

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**

5  
6 BY: /s/ Trevor C. Zeiler

7 Sandra G. Ezell  
8 Eden M. Darrell  
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10 Dennis Hom (Pro Hac Vice)  
11 Attorneys for Defendant  
12 TESLA, INC.

13  
14  
15 Dated: January 3, 2025

**MCCUNE LAW GROUP, APC**

16  
17 By: /s/ Todd A. Walburg

18 TODD A. WALBURG  
19 SCOTT B. BAEZ  
20 Attorneys for Plaintiff DONNA LEACH,  
21 individually and on behalf of Estate of Clyde Leach  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2025, I filed the foregoing document entitled ***JOINT STATEMENT REGARDING DISCOVERY DISPUTE AS TO PLAINTIFF'S NOTICE OF DEPOSITION OF LARS MORAVY PURSUANT TO JUDGE ILLSTON'S STANDING ORDER*** with the clerk of court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this action.

/s/ Trevor C. Zeiler  
Trevor C. Zeiler